

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FELIZ ORELVIS,

Plaintiff,

DECISION AND ORDER  
05-CV-6498 CJS

vs.

THE STATE OF NEW YORK DEPARTMENT  
OF CORRECTIONAL SERVICES, et al.,

Defendants.

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APPEARANCES

For plaintiff:

Feliz Orelvis, *pro se*  
97-A-6178  
Auburn Correctional Facility  
Box 618  
Auburn, New York 13021

For defendants:

Maritza C. Buitrago, Esq.  
Office of New York State Attorney General  
144 Exchange Blvd., Suite 200  
Rochester, New York 14614

INTRODUCTION

Plaintiff Feliz Orelvis ("Plaintiff"), a prison inmate currently confined at Auburn Correctional Facility, proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983, claiming that defendants violated his constitutional rights. Now before the Court is Plaintiff's motion to compel [#18]. For the reasons that follow, the application is denied.

FACTUAL BACKGROUND

On or about September 6, 2006, Plaintiff served a discovery demand on

Defendants' counsel.<sup>1</sup> A few days later, on September 14, 2006, Plaintiff filed a document entitled "Plaintiff's Requests for Orders" [#18], which was docketed as a motion to compel. The application contained several requests. First, Plaintiff requested that Defendants provide him with the actual name of the "John Doe" doctor captioned in the Complaint. Second, Plaintiff requested that the Court direct Defendants to file an answer to his proposed Supplemental Complaint [#10]. And lastly, Plaintiff requested that Defendants file a response to his discovery demand.

On October 11, 2006, Defendants filed a response to Plaintiff's discovery demand. (Aff. of Tamara B. Christie [#21] at ¶ 5).<sup>2</sup>

On October 13, 2006, Plaintiff, who presumably did not know that Defendants had already mailed their discovery response, filed a document [#25], dated October 10, 2006, which the Court views as supplement to the motion to compel. This document repeats Plaintiff's earlier request for an order directing defendants to respond to Plaintiff's discovery demand. Notably, in the supplemental submission, Plaintiff mistakenly states that "responses to the above discovery matter were [due] by October 6, 2006." (See, Federal Rules of Civil Procedure 5(b)(2)(C), 6(d) 33(b)(2) and 34(b)(2)(A) (Rule 6(d) provides that when service is made by mail, 3 days are added to the time to respond).

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<sup>1</sup>There is some dispute as to the date of the demand. Plaintiff maintains that the demand was served on September 6, 2005, while Defendant's counsel maintains that the demand was dated September 7, 2005. The demand was not received by Defendants' counsel until September 11, 2006.

<sup>2</sup>As part of Defendants' response, they informed Plaintiff that the "John Doe" doctor's name is Dr. Benjamin Agustin.

### DISCUSSION

Plaintiff's requests are premature and/or moot, and are therefore denied. As discussed above, on October 11, 2006, Defendants filed a response to Plaintiff's discovery demand. Therefore, in addition to the fact that the motion to compel [#18] was prematurely filed before Defendants' response was due, it is now moot. Plaintiff's demand for an answer to his supplemental pleading was similarly premature when made, since Plaintiff was never granted permission to file such a pleading. However, the Honorable Marian W. Payson, United States Magistrate Judge, subsequently issued a Report and Recommendation, recommending that the Court grant-in-part and deny-in-part Plaintiff's application to file a supplemental complaint. By separate Decision and Order, the Court is denying Plaintiff's Objections to that Report and Recommendation, and is directing that the Supplemental Complaint be served on the newly-named defendant, Deputy Saj ("Saj"). Presumably, Saj will file an answer once he is served with the summons and complaint.

### CONCLUSION

For the reasons stated above, Plaintiff's motion to compel [#18] is denied.

SO ORDERED.

Dated: October 16, 2008  
Rochester, New York

ENTER.

/s/ Charles J. Siragusa  
CHARLES J. SIRAGUSA  
United States District Judge